

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

UNITED STATES OF AMERICA,

Crim. No. 03-187 (RHK/AJB)

Plaintiff,

v.

MEMORANDUM AND ORDER

SERGIO LOPEZ,

Defendant.

This matter is presently before the Court on Defendant's "Motion For Reconsideration," (Docket No. 37), by which Defendant is renewing his request for a free copy of the transcript of his sentencing hearing. Defendant's initial request for a free transcript was denied, because he failed to show that he had any specific and valid need for the transcript. (See Order dated August 31, 2005; [Docket No. 36].)

In his current motion for reconsideration, Defendant contends that he needs the transcript of his sentencing hearing to support a post-conviction motion that he intends to file – presumably a motion for relief under 28 U.S.C. § 2255. Defendant's motion indicates that he intends to challenge his sentence based on the Supreme Court's rulings in United States v. Booker, 125 S.Ct. 738 (2005). However, the Eighth Circuit Court of Appeals has held that Booker is not retroactively applicable on collateral review, and that claims based on Booker cannot be raised in post-conviction proceedings. Never Misses A Shot v. United States, 413 F.3d 781, 783(8th Cir. 2005) (per curiam). Because Defendant cannot collaterally attack his sentence based on Booker, his declared intention to raise a Booker claim does not provide a valid reason for providing him with a free transcript of his sentencing hearing.

Thus, the Court finds that Defendant still has not shown sufficient reason to provide him with the

free transcript he is seeking. The Motion for Reconsideration will therefore be denied.

Based upon the foregoing, and all of the files, records and proceedings herein,

IT IS HEREBY ORDERED that:

Defendant's "Motion For Reconsideration," (Docket No. 37), is **DENIED**.

Dated: October 17, 2005

s/Richard H. Kyle

RICHARD H. KYLE

United States District Judge